

REMARKS***Affirmation of Election***

Applicants affirm the provisional election made by Jian Zhou on November 3, 2005 to prosecute the invention of Group I, Claims 1 – 24.

Remaining Claims

Claims 2 and 11 have been canceled and Claims 1 and 12 have been amended to more clearly point out and distinctly claim the invention. Claims 2 and 11 have been canceled. After these amendments are entered, twenty-two (22) claims (Claims 1, 3 – 10, and 12 – 24) remain under consideration in this application.

Claim Rejections under 35 U.S.C §102(e)/ §103 – Schwind, et al.

Claims 1 – 12, 14, 16 – 19, 21, and 23 stand rejected under 35 USC §102(b) as being anticipated by or, in the alternative, under 35 USC §103, as obvious over *Schwind, et al.* (WO 2002/0155961). Specifically, Examiner cites paragraphs 0030 – 0032 and 0039 as teaching the claimed invention.

Claim 1 has been amended to incorporate the limitations of Claims 2 and 12. Specifically, Claim 1 has been amended to require a phosphate buffered lens care solution with a total concentration of chloride ions and phosphate ions below 1500 ppm. Additionally, the phosphate buffer is at a concentration less than 0.1%.

Schwind, et al. neither teach or suggest such a lens care composition. The paragraphs cited by the Examiner (and, more importantly, the document when read as a whole) do not teach a solution having less than 0.1% phosphate buffer, less than 1 ppm of a polymeric antimicrobial, and a total concentration of chloride ions and phosphate ions below 1500 ppm – all as required by Claim 1.

Specifically, neither the solution put forward at paragraphs 0030 – 0032 nor the reference as a whole make no teaching of the concentration of the buffer or the level of chloride and phosphate ions in the solution. Likewise, the solution put forward at paragraph 0039 does not have less than 1 ppm of a polymeric antimicrobial and has 8.6 g/l sodium chloride (resulting in approximately 5200 ppm chloride ion). This high level of chloride ion is explicitly taught by the present application to be avoided and not to be within the scope of the claimed invention (See, e.g., page 8, lines 7 – 14).

Furthermore, *Schwind, et al.* never teach or suggest that the total concentration of chloride and phosphate ions in the solution must be below 1500 ppm. This is important to note in view of the teachings of the present application at page 7, line 17 – page 8, line 5; that the level of chloride and phosphate ions in solutions can be affected by the method employed in the art of adjusting pH with hydrochloric acid and using TRIS·HCl buffer, rather than the “free-base” form that does not

include HCl. Because *Schwind, et al.* make no teachings or suggestions of this level of ions, it cannot anticipate or render obvious Claim 1.

Claims 2 and 12 are canceled. Claims 3 – 11, 14, and 16 - 19 depend from Claim 1 and likewise, cannot be anticipated or rendered obvious by *Schwind, et al.* Claims 21 and 23 further claim a phosphate buffer that is lower than 0.06% (Claim 21) or between 0.001 and 0.05% (Claim 23). These levels of phosphate buffer are not taught or suggested by *Schwind, et al.* Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claim Rejections under 35 U.S.C §102(e)/ §103 – Groemminger, et al.

Claims 1 – 8, 11 – 12, 14 – 15, and 17 – 20 stand rejected under 35 USC §102(b) as being anticipated by or, in the alternative, under 35 USC §103, as obvious over *Groemminger, et al.* (US 6,872,695).

As explained above, Claim 1 has been amended to incorporate the limitations of Claims 2 and 12. Specifically, Claim 1 has been amended to require a phosphate buffered lens care solution with a total concentration of chloride ions and phosphate ions below 1500 ppm. Additionally, the phosphate buffer is at a concentration less than 0.1%.

Groemminger, et al. neither teach or suggest such a lens care composition. Specifically, *Groemminger, et al.* do not teach the use of a phosphate buffer at any level. In fact, the solutions of the cited reference are not buffered at all.

Furthermore, *Groemminger, et al.* also do not teach or suggest that the total concentration of chloride and phosphate ions in the solution must be below 1500 ppm. Because *Groemminger, et al.* make no teachings or suggestions of this level of ions, it cannot anticipate or render obvious Claim 1.

Claims 2 and 12 are canceled. Claims 3 – 8, 11, 14, and 17 - 19 depend from Claim 1 and likewise, cannot be anticipated or rendered obvious by *Schwind, et al.* Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claim Rejections under 35 U.S.C §103 – Schwind, et al. in view of Hu, et al.

Claim 15 stands rejected under 35 USC §103(a) as being unpatentable over *Schwind, et al.* (WO 2002/0155961) in view of *Hu, et al.* (US 6,037,328).

Claim 15 is dependent from Claim 1. With regard to Claim 1, *Schwind, et al.* has been discussed above. *Hu, et al.* do not provide further teachings that would render the invention claimed in Claim 1 obvious. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claim Rejections under 35 U.S.C §103 – Schwind, et al. in view of Groemminger, et al.

Claims 20, 22, and 24 stand rejected under 35 USC §103(a) as being unpatentable over *Schwind, et al.* (WO 2002/0155961) in view of *Groemminger, et al.* (US 6,872,695).

Claim 20 is dependent from Claim 1; Claim 22 is dependent from Claim 21; and Claim 24 is dependent from Claim 23. With regard to Claims 1, 21, and 23, *Schwind, et al.* has been discussed above. *Groemminger, et al.* do not provide further teachings that would render the invention claimed in Claim 1, 21, and 23 obvious. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Double Patenting Rejections

Claims 1 – 24 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1 – 4 of 6261546; Claims 1 – 15 of 5858996; Claims 1 – 12 of 5846919; Claims 1 – 5 of 5807585; Claims 1 – 5 of 5683993; Claims 1 – 11 of 5576276;

None of these references claim the currently claimed lens care composition. The references do not teach a solution having less than 0.1% phosphate buffer, less than 1 ppm of a polymeric antimicrobial, and a total concentration of chloride ions and phosphate ions below 1500 ppm – all as required by Claims 1 - 24.

CONCLUSION

In view of the foregoing and in conclusion, Applicants submit that all of the pending claims are now in conditions for allowance.

Should the Examiner believe that a discussion with Applicants' representative would further the prosecution of this application, the Examiner is respectfully invited to contact the undersigned. Please address all correspondence to Robert Gorman, CIBA Vision, Patent Department, 11460 Johns Creek Parkway, Duluth, GA 30097. The Commissioner is hereby authorized to charge any other fees which may be required under 37 C.F.R. §§1.16 and 1.17, or credit any overpayment, to Deposit Account No. 50-2965.

Respectfully submitted,



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Date: July 5, 2006

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